
THE ROLE OF NOMINALISATION IN ENGLISH LEGAL TEXTS

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Abstract: The present paper gives an insight into the legal discourse. It attempts to show how the form and content of a legal message is organised. It presents results of the research conducted into legislative texts – randomly selected British bills and acts, found on the Internet, and into certain types of legal documents such as contracts, last wills and testaments, and affidavits. The author focuses on nominalisation that plays an important role in the English legal language. She also concentrates on the linguistic means of referring - the phenomenon that is closely connected with nominalisation.

Key words: legal discourse, nominalisation, determiners, demonstratives

Introduction

The general character of legal writing results from the general purpose of the social and law system, which imposes duties and obligations, confers rights, and defines permissions and prohibitions. The accomplishment of such social and legal goals in writing, whether semantic, syntactic or pragmatic, requires analogous linguistic means.

The present day language of law is a highly specialised and distinctive discourse type in English. In my understanding the term discourse covers spoken and written forms of language that define the world of human behaviour and meet the requirements of communication of a certain community of people - in our case - a legal community.

1. The Nature of Communication in the Legal Discourse

The language of law has long been criticised for “its obscure expressions and circumlocutions, long-winded sentences, involved constructions and tortuous syntax, apparently meaningless repetitions and archaisms” (Bhatia, 1994: 101,102). All this causes different kinds of discrepancies in the legal discourse where communication is temporally, spatially, and socially asynchronous.

Successful communication in the legal context depends on both appropriate performance and interpretation. In the process of performance the speaker/writer refers via certain linguistic forms to the objects, phenomena or others in order to help the hearer/reader to identify them during the process of interpretation. The aim is to achieve maximum effect with the smallest amount of energy and time on both speaker/writer’s and the hearer/reader’s sides.

In legal communication it is necessary to realise that texts are generated to be read over time. The time when a legal message is formulated and the time when it is interpreted do not coincide. There is a certain temporal as well as spatial distance that may influence the interpretation of a legal message.

1.1 *The Requirements for Felicitous Communication*

The felicitous performance and interpretation of a legal text require correct spatial and temporal localisation of both the creator and the target addressee of a legal message as well as the personal, social and linguistic determination of the parties and items involved in legal communication. “Without knowing who the addressee is, what time the note was written, or the location of the other office, we are hard put to make a precise interpretation of the message” (Hatch, 1992: 209,210). Tarnyiková also stresses “the importance of the context and speaker’s intention in interpretation of a message” (2000: 306). The future interpreters may interpret a legal message, for instance a statute text in accordance with their world knowledge, in accordance with newly created social and political situation, in accordance with their social status. Not to give any opportunity for misinterpretation, the creator of a legal text has to use very precise language.

The most obvious paradox of legal writing lies in the contradiction between the character of texts, which are supposed to be precise and clear, but at the same time all-inclusive and complex. These qualities are reflected in the use of specific linguistic devices, such as nominalisation, qualifications, repetitions and all-inclusiveness.

2. Nominalisation

One of the most striking linguistic features of legal writing is the use of complex heavily postmodified nominal phrases. The two following examples are taken from Wills Act, 1970 and a Seller – Buyer contract, 1998. The nominal phrases are shown in square brackets.

Legislative Texts

[No obliteration, interlineations], or [other alteration] made in [any will] after [the execution] thereof shall be valid or have [effect] except so far as [the words] or [effect of the will] before [such alteration] shall not be apparent, unless [such alteration] shall be executed in [like manner] as hereinbefore is required for [the execution of the will], but [the will], with [such alteration]n as part thereof, shall be deemed to be duly executed if [the signature of the testator] and [the subscription of the witness] be made in [the margin] or on [some other part of the will] opposite or near to [such alteration] or at [the foot] or [end] of or opposite to [a memorandum] referring to [such alteration] and written of [some other part of the will]. (Wills Act, 1970)

Contract

*Upon [Seller’s **failure**] to cure [defects] of which [written notice] has been given, within [the time **limit** aforesaid], [the deposit] [this day paid] shall be returned and [all right and liabilities] arising hereunder shall terminate, or [Purchaser] may close [this transaction] in [the same manner] as if [no title defects] had been found.*

2.1 *General Description*

Chomsky believes that “nominalisation is a process by which a verb phrase is transformed into a nominal” (1968:2). A similar attitude to nominalisation is presented by Quirk (1985:187) who considers nominalisation a process of turning a verb or an adjective into a noun. Halliday (1985: 68) describes nominalisation more generally – as any element or group that can function as a noun or a noun group. Mathews defines nominalisation similarly to Halliday – as “any process by which either a noun or a syntactic unit functioning as a noun phrase is derived from any other kind of unit” (1997: 37). Bhatia refers to it as “the third type

of complex nominal phrases that is conventionally called nominalisation, and is overwhelmingly used in legislative provisions” (1985: 47).

The creators of the texts do not take into consideration an aesthetic viewpoint. From the point of view of creators nominalisation can be understood as a means of condensation and clarity. In my view the high occurrence of nominal phrases causes a certain degree of ambiguity in legal text interpretation.

3. Determiners as a weird word class

The idea of determiners in grammar is quite new, and there is still some debate about them whether or not they constitute a word class. Members of the same word class behave in the same- they serve the same function in an utterance.

Determiners are sometimes considered a weird word class because almost all its members (with the exception of articles) belong at least to two word classes. Many words used as determiners can also be used as pronouns or as adverbs.

3.1 Function

As a closed word class determiners have a certain function in language. They “signal nouns in a variety of ways: they may define the relationship of the noun to the speaker or listener (or reader); they may identify the noun as specific or general; they may quantify it specifically or refer to quantity in general” (Kolln and Funk, 1998:73). “The determiner class is one of the structure classes that straddle the line between a word class and a function. On the one hand, our most common determiners, the articles, do indeed constitute a small, closed structure class. At the other end of the spectrum are the possessive nouns, which function as determiners while retaining their membership in the open class noun. In between are the subclasses of determiners that belong to the closed pronoun class: Demonstrative, possessive, and indefinite pronouns all function as determiners; and, of course, as pronouns they also function as nominals (in fact, 'pronominal' would be a more accurate label than 'pronoun') (Börjars and Burridge, 2010:212) .

The investigation conducted into the legal texts confirmed a high frequency of determiners in them. Their high occurrence is not unintentional and accidental. As it has been mentioned nominalisation is a frequent phenomenon in legal writing. Every nominal phrase found in the analysed legal texts starts with a determiner. The determiner that accompanies a noun has an important role – it is a carrier of reference.

This paper does not deal with all determiners, the concentration will be put on the demonstratives *this, these, that and those*.

3.2 Categorisation of determiners

The categorisation of *this, that, these* and *those* has been complicated. J. C. Nesfield in his *Outline of English Grammar* published in 1919 says that *this* and *that* belong to demonstrative pronouns. He does not mention that they may function as determiners (1919: 28).

Later in Zandwort’s *Handbook of English grammar* we find “There are four demonstrative pronouns in common use *this* and *that* and their plural variations *these* and *those*. *This* and *these* refer to what is near in space, time or conception, *that* and *those* to what is farther off. He demonstrates also their temporal usage. *This* may refer to what follows and *that* to what precedes” (1957: 147). According to Greebaum and Quirk “the demonstratives *this, that, these, those* function both as pronouns and demonstrative determiners” (1995: 72-73).

4. Demonstratives

4.1 General Description

This paper is an attempt to show the role of demonstratives in the legal discourse. They belong to the oldest words in language and their etymology is not almost analysable. They are the first words that children learn. Demonstratives play one of the most important functions in everyday human communication.

4.2 Function

These closed-class expressions are commonly classified as grammatical words that may function as pronouns or determiners. They are called deictic as they serve to indicate the location of an object or the direction of movement relative to the location of the pointer. Their importance is also confirmed in legal texts. Their function in legal texts is to provide spatial and temporal orientation. They coordinate the attentional focus of the communicative partners.

Some researchers (Moore, C., P. J. Dunham) assume that they are the quintessential tool for initiating joint attention. Joint attention, as it is most usually defined, is simply our ability to share attention with another towards the same object or event. Joint attention is a complex phenomenon that involves three basic components: the addressor and the addressee, and an object of reference. If the communicative act is successful, the communicative partners focus their attention on the same referent. I suppose that joint reference is the requirement that has to be fulfilled to make the process of legal communication successful.

5. Findings

In order to improve the identification and orientation in legal texts the creator of a legal message uses referring expressions. They are divided according to whether they express something what is near the speaker/writer (*this*, *now*, *here*) or away from him (*that*, *then*, *there*), both spatially and temporarily. The results of our analysis prove our expectations. The most frequent deictic expressions are *this/these* – *that/those* in both legislative and legal texts. All the examples presented below were found in the analysed texts.

The demonstratives *this* and *that* as well as their plural forms *these* and *those* express contrasting meaning. The temporal expression *now* and the spatial expression *here* are often replaced by the demonstrative determiner *this/these*. The expressions *then* and *there* are replaced by the pronoun *that/those*. The speaker/writer and their location (either spatial or temporal) or the position of an object or the direction of movement are thus implicitly given in opposition to hearer/reader and their spatial and temporal location. Yule (1996: 9) mentions three kinds of deixis: “temporal, spatial, and personal”.

In all the analysed tests *this* functions in two ways. It functions either as a demonstrative pronoun or a demonstrative determiner.

In all the following examples (taken from the analysed last wills and testaments) *this* functions as a demonstrative pronoun. It is not followed by a noun and it does not determine a noun. It refers to the document itself and syntactically plays the role of the object.

*I DIANA PRINCESS OF WALES HEREBY DECLARE **this** to be my last Will*

*I, JOSEPH P. DIMAGGIO do hereby make, publish and declare **this** to be my Last Will and Testament, ...*

*I, JOHN F. KENNEDY, JR make **this** my last will...*

I, JOSEPH P. DIMAGGIO, of the City of Hollywood, County of Broward and State of Florida, being of sound and disposing mind and memory do hereby make, publish and declare

this to be my Last Will and Testament, hereby revoking any and all Wills and Codicils by me heretofore made. (The Last Will and Testament of Joseph P. DiMaggio)

In the following example (taken from the last will of John Lennon) *this* functions as a demonstrative pronoun. Syntactically it plays the role of the subject.

*FOURTH: In the event that my wife and I die under such circumstances that there is not sufficient evidence to determine which of us has predeceased the other, I hereby declare it to be my will that it shall be deemed that I shall have predeceased her and that **this**, my Will, and any and all of its provisions shall be construed based upon that assumption. (Last Will and Testament Of John Winston Ono Lennon)*

In most of the cases *this* functions as a determiner. It refers to the document (to the given last will) itself; it shows not only spatial but also temporal reference.

*References in **this will** or a codicil to my "executor" mean the one or more executors (or administrators with **this will** annexed) for the time being in office. No executor or a codicil need furnish any surety on any official bond. (The Will of John F. Kennedy, Jr.)*

*EIGHTH: If any legatee or beneficiary under **this will** or the trust agreement between myself as Grantor and YOKO ONO LENNON and ELI GARBER as Trustees, dated November 12, 1979 shall interpose objections to the probate of **this Will**, or institute or prosecute or be in any way interested or instrumental in the institution or prosecution of any action or proceeding for the purpose of setting aside or invalidating **this Will**, then and in each such case, I direct that such legatee or beneficiary shall receive nothing whatsoever under **this Will** or the aforementioned Trust. (Last Will And Testament Of John Winston Ono Lennon)*

This in the following examples indicates which entity the creator of the document refers to and distinguishes the entity from the others. It is employed for spatial deixis (using the context of the physical surroundings of the creator and reader) and for discourse deixis (including abstract concepts) also to something what is being said. It stands in front of different nouns such as *article, page, property, and instrument*.

*THE FOREGOING INSTRUMENT consisting of four (4) typewritten pages, including **this page**, was on the 12th day of November, 1979, signed, sealed, published and declared by JOHN WINSTON ONO LENNON, the Testator therein named, as and for his Last Will and Testament, in the present of us, who at his request, and in his presence, and in the presence of each other, have hereunto set our names as witnesses. (Last Will And Testament Of John Winston Ono Lennon)*

*If any beneficiary should be under the age of eighteen (18) years at the time distribution is required to be made to him or her under **this Article** of my Last Will and Testament, my Personal Representative is authorized to distribute such beneficiary's portion of **this property** to any suitable person selected by them, to be free of trust, for distribution to such beneficiary when he or she reaches his or her majority, and a receipt of such person shall constitute a complete acquittance to my Personal Representative. (The Last Will and Testament of Joseph P. DiMaggio)*

*I, Elvis A. Presley, a resident and citizen of Shelby County, Tennessee, being of sound mind and disposing memory, do hereby make, publish and declare **this instrument** to be my last will and testament, hereby revoking any and all wills and codicils by me at any time heretofore made. (The Will of Elvis A. Presley)*

The demonstrative determiner *these* stands before a plural countable noun and determines it in the same way as *this*.

In the following examples containing a demonstrative determiner *that* the meaning is dependent on something other than the relative physical location of the creator or reader, it refers to something that was said earlier.

*IN WITNESS WHEREOF, I have subscribed and sealed and do publish and declare **these** presents as and for my Last Will and Testament, this 12th day of November, 1979.*

*SIXTH: I name my cousin Anthony Stanislaus Radziwill as my executor; and if for any reason, he fails to qualify or ceases to serve in **that** capacity, I name my cousin Timothy P. Shriver as my executor in his place. (The Will of John F. Kennedy, Jr.)*

*FOURTH: In the event that my wife and I die under such circumstances that there is not sufficient evidence to determine which of us has predeceased the other, I hereby declare it to be my will that it shall be deemed that I shall have predeceased her and that this, my Will, and any and all of its provisions shall be construed based upon **that** assumption. (Last Will And Testament Of John Winston Ono Lennon)*

*SEVENTH: No person named herein to serve in any fiduciary capacity shall be required to file or post any bond for the faithful performance of his or her duties, in **that** capacity in this or in any other jurisdiction, any law to the contrary notwithstanding. (Last Will And Testament Of John Winston Ono Lennon)*

Conclusion

The findings prove that the greater is the spatial, temporal, and personal distance between the creator and the reader/the target addressee of a legal message, the more complicated the interaction between them seems to be. It necessitates such referring linguistic devices that are able to achieve the required goals of communication. Except for special deictic expressions such as *hereby*, *herein*, *thereon*, etc. the legal discourse also uses the devices that are used in everyday communication. The most frequent referring means are *this*, *that*, *these* and *those*. They show the relationship between the participants of legal communication, they help to locate all the involved persons in space and time; they also refer to the time and/or to the place when and/or/where a legislative text or a legal document is composed or to (a) part/s of it. They may also refer to certain negotiated matters; ideas, statements, phrases, or headings of the document; to the contractual parts or to the way of performing a legal document.

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